IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2005

C O R A M

THE HONOURABLE MR. JUSTICE P.SATHASIVAM
and
THE HONOURABLE MR. JUSTICE S.K.KRISHNAN

WRIT PETITION NO.12945 of 2001
& WPMP.No.19038 of 2001

S.Ramu
Ex. Branch Post Master,
Seethakamangalam,
A/W Sengalipuram-612 602,
Kodavasal Taluk,
Thiruvarur District. ... Petitioner

vs.

1.The Union of India,
rep. by the Additional General
Manager, Business Development
Office of the Chief Post Master
General, Tamil Nadu Circle,
Chennai-600 002.

2.The Director of Postal Services,
Thiruchirapalli.

3.The Superintendent of Post Offices,
Kumbakonam Division,
Kumbakonam-612 001.

4.The Central Administrative Tribunal,
Chennai-600 104. ... Respondents

Petition under Article 226 of The Constitution of India to issue a Writ of Certiorari calling for the records relating to the order in O.A.No.496/1997 passed by the Central Administrative Tribunal, Madras Bench, dated 16.7.1999 and quash the same.

For petitioner ... Mr.G.Purushothaman for
Mr.A.Nagarathinam
For Respondents ... Mr.K.Mohanram,SCGSC

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J)

Aggrieved by the order of the Central Administrative Tribunal, Madras Bench dated 16.7.1999 made in O.A.No.496 of 1997, the petitioner, Ex. Branch Post Master, Seethakamangalam, has filed the above writ petition to quash the same on various grounds.

2. The case of the petitioner is briefly stated hereunder:

The petitioner was appointed as Branch Post Master, Seethakamangalam Branch Office on 18.2.1992 by the Superintendent of Post Offices, Kumbakonam Division, the third respondent herein. Whileso, he was placed under PUT OFF duty with effect from 18.6.1994 on the ground of disciplinary proceedings contemplated against him. The third respondent has issued a charge memo dated 30.9.1994 alleging that the petitioner had kept the cash and stamp balance of Seethakamangalam Branch Office short to the tune of Rs.348.10 and secondly, he had failed to bring into account a sum of Rs.1,500/-, which was accepted as deposit in the S.B. Account No.463936 in the name of R.Vasuki. Thereafter, the Assistant Superintendent of Post Offices, Kumbakonam North Sub Division was appointed as Enquiry Officer. The Enquiry Officer has submitted his report on 30.1.1995 concluding the charges levelled against him were established. Thereafter, the Disciplinary Authority called for an explanation from the petitioner. The petitioner has also submitted his explanation on 18.2.1995. Ultimately, the Disciplinary Authority has passed an order on 29.1.1996 removing the petitioner from service.

3. Questioning the order of removal, the petitioner has preferred an appeal to the second respondent, the Director of Postal Services, Trichirapalli. The same was disposed of by the first respondent on 11.5.1996 dismissing his appeal confirming the order of the third respondent. Thereafter, the petitioner has filed an application in O.A.No.496 of 1997 before the Central Administrative Tribunal, Chennai Bench. By the impugned order dated 16.7.1999, the Tribunal dismissed the said application. Hence, the present writ petition.

4. Heard the learned counsel for the petitioner as well as the learned Additional Central Government Standing Counsel for respondents 1 to 3.

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5. After taking us through relevant materials and the impugned order of the Tribunal, the learned counsel appearing for the petitioner has raised the following contentions:

(i) Inasmuch as the petitioner was not given an opportunity to putforth his objection with regard to proposed punishment, the ultimate order passed by the third respondent cannot be sustained. In other words, the third respondent has not complied with Rule 8 of E.D.A. Conduct and Service Rules.

(ii) Even though the petitioner has filed an appeal to the second respondent, who is an Appellate Authority, his appeal was disposed of by the first respondent. Hence, the petitioner lost his one more remedy viz., revisional jurisdiction.

(iii) The appeal preferred by the petitioner has not been disposed of as provided under Rule 15 of the said Rules. The Appellate Authority has not considered the punishment with reference to the charges levelled against him.

6. On the other hand, the learned Additional Central Government Standing Counsel after taking us through the relevant materials and the Rules applicable would contend that the Disciplinary Authority has passed the order removing the petitioner from service after fulfilling all the conditions as provided under the Rules. According to him, there is no deviation as claimed by the learned counsel for the petitioner.

7. He further contended that in the absence of the Appellate Authority viz.,the second respondent, inasmuch as the first respondent was duly authorised to consider and dispose of the disciplinary matters, there is no flaw in the disposal of the appeal. He also brought to our notice that the Appellate Authority has disposed of the appeal in accordance with the conditions as prescribed in Rule 15 including the proportionality of the punishment with reference to the proved charges. Accordingly, prayed for dismissal of the writ petition.

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8. We have carefully considered the rival submissions.

9.With reference to the first contention that the petitioner was not given show cause notice before imposing punishment of removal from service, it is relevant to refer the Rule applicable. Rule 8 speaks about the procedure for

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imposing penalty which reads as follows:

"8.Procedure for imposing a penalty:

(1) No order imposing a penalty shall be passed except after-

(a) the employee is informed in writing of the proposal to take action against him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make, and

(b) such representation, if any, is taken into consideration by the appointing authority:

Provided that the penalty of dismissal or removal from service shall not be imposed except after an enquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges:

Provided further that where it is proposed after such enquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such enquiry.

(2) The record of proceedings shall include-

(i) a copy of the intimation to the employee of the proposal to take action against him;

(ii) a copy of the statement of allegations, along with a list of evidence in support thereof, communicated to him;

(iii) his representation, if any;

(iv) the records of the enquiry proceedings along with the enquiry report of the appointing authority or enquiry officer, if any, appointed in a case where a formal enquiry is necessary;

(v) findings of the appointing authority in respect of the allegations with reasons therefor; and

(vi) the order imposing the penalty.

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10. Though the learned counsel appearing for the petitioner vehemently contended that the Disciplinary Authority has complied with earlier part of the Rule, regarding opportunity with reference to the report of Enquiry Officer, he has not issued notice to the petitioner giving opportunity to putforth his claim before imposing a penalty. A reading of the above provisions, particularly, Sub Rule 1 and 2, as rightly pointed out by the learned Additional Central Government Standing Counsel, there is no such specific Rule, which compels the Authority to issue notice intimating the proposed penalty. On the other hand, the Rule provides that before initiation of disciplinary proceedings, the person concerned must be informed in writing regarding the proposal to take action against him. The allegations on which it is proposed to be taken and he must be given an opportunity to make any representation. It further shows that if the explanation of the person concerned is not acceptable, it is open to the Authority to take action after due enquiry. It is not the case of the petitioner that he was not given opportunity like participating in the enquiry.

11. It is not in dispute that after submission of the Report by the Enquiry Officer, the petitioner was given copy of the enquiry report and also made a reply to the same. The Sub rule 2 does not not show that among the other reference/intimation etc., proposed penalty has to be intimated before imposing the same. In the absence of specific Rule, which compels the Authority to communicate the same, it cannot be contended that the petitioner must be given one more opportunity regarding the proposed penalty. In this regard, it is relevant to refer the judgment of the Constitution Bench of the Supreme Court reported in 1993 4 SCC 727 (MANAGING DIRECTOR, ECIL, HYDERABAD AND OTHERS VS. B.KARUNAKAR AND OTHERS). In that decision, after referring various earlier decisions including Mohammed Ramzan Khan's case, their Lordships have held as follows:

> "25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for

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either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment."

In para 29, it is further held as follows:

"29. Hence, it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice."

12. It is clear from the above decision that the second opportunity viz., communication of the proposed punishment has taken away by Forty second Amendment of the Constitution. No doubt, if there is specific provision in the Service Rules applicable to the persons concerned, the disciplinary authority has to fulfil the said mandate. We have already extracted the relevant rule applicable. We are satisfied that there is no such specific provision compelling the disciplinary authority to provide one more opportunity to the petitioner before imposition of penalty. In such circumstance, the first contention raised by the learned counsel for the petitioner is liable to be rejected.

13. Coming to the second contention that though the petitioner has filed an appeal to the second respondent/Appellate Authority, his appeal was disposed of by the first respondent, who is the Revisional Authority. In this regard, learned Additional Central Government Standing Counsel has brought to our notice, the stand taken by the respondents in para 19 of the counter affidavit, in which, it is specifically stated that Rule 10 of ED Agents (C &S) Rules, 1964 specifies the authorities, who are competent to dispose of the appeals viz., the Director of Postal Services, Trichirapalli. It is further stated that the Director of Postal Services, Trichirapalli has been transferred to the Office of the Chief Post Master General, Chennai-2 as Additional General Manager (Business and Development) and power has been vested with him to

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dispose of the appeal. The Chief Post Master General, Tamil Nadu Circle, Chennai-2, in his memo dated 29.3.1996 empowered the Additional General Manager (Business and Development) office of the Chief Post Master General, Chennai-2 to look after the statutory duties of the Director of Postal Services, Trichirapalli for Central Region consequent on the redeployment of the post of Director of Postal Services, Trichirapalli as Director (BD) at Circle level and the same is in pursuance of the authority vested with the Chief Post Master General by order No.31-31/87-PE-II dated 24.2.1989 of the Director General, Department of Posts, New Delhi. Apart from the specific information in the counter affidavit vide., para 19, the respondents have also filed additional typed set, which contains the said proceedings. It is also brought to our notice that the same information has been furnished before the Tribunal in the form of reply. In the light of the above information, we are of the view that the disposal of the appeal by the first respondent cannot be faulted with and we do not find any procedural error as claimed by the learned counsel for the petitioner. Accordingly, we reject the second contention also.

14. Coming to the last contention that the appeal has not been disposed of as provided under Rule 15 and no discussion with regard to punishment. Rule 15 speaks about the consideration of appeal by the authority concerned, which reads as follows:

> "15. Consideration of appeal:
> The appellate authority shall consider,-
> (a) whether the procedure prescribed in these rules has been complied with;
> (b) whether the findings are justified; and
> (c) whether the penalty imposed is excessive, adequate or inadequate and pass orders-
> (i) setting aside, reducing, confirming or enhancing the penalty;
> (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:
>
> Provided that no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty."

15. It is true that Sub Clause enables the Appellate Authority to consider whether the penalty imposed is excessive, adequate or inadequate and pass appropriate orders. A reading of the order of the Appellate Authority shows that after

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referring the case of the petitioner with reference to the charges levelled against him, findings of the Enquiry Officer and the decision of the Disciplinary Authority, after considering all those aspects and concurring with the conclusion arrived at by the Disciplinary Authority and taking note of the totality of the charges, arrived at a conclusion that the punishment of the removal from service is justifiable. Though the Appellate Authority has not mentioned the relevant Rule and the procedure to be followed, it cannot be construed that he has not considered the case of the petitioner, particularly, the punishments imposed on the petitioner.

16. As stated earlier, a reading of the entire order of the Appellate Authority clearly shows that he has considered the relevant materials, such as charges levelled against the petitioner, report of the Enquiry officer, decision taken by the Disciplinary Authority and the grounds raised by the petitioner in the appeal and ultimately concluded that there is no merit in the appeal and upheld the order of the Disciplinary Authority including the punishment of removal. We are satisfied that the Appellate Authority has fully complied with Rule 15 and also considered the quantum of punishment.

17. In this regard, it is worthwhile to mention the decision reported in (2001)2 Supreme Court Cases 386 (OM KUMAR AND OTHERS VS. UNION OF INDIA) wherein their Lordships have held as follows:

> "The quantum of punishment in disciplinary matters is primarily for the disciplinary authority to decide and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as Wednesbury principles."

18. It is also relevant to refer the recent pronouncement of the Supreme Court regarding the interference of this Court exercising jurisdiction under Article 226 of the Constitution of India in a matter relating to decision taken by the Disciplinary Authority and the Appellate Authority reported in (2003) 9 Supreme Court Cases 191 (SUB DIVISIONAL OFFICER, KONCH VS. MAHARAJ SINGH) wherein their Lordships have held as follows:

> "The jurisdiction of the High Court under Article 226 is a supervisory one and not an appellate one. When the conclusion of the enquiring authority was upheld by the disciplinary authority as well as by the U.P. Public Service Tribunal, this Court is not justified

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in interfering with the findings arrived at by the enquiring authority by exercising jurisdiction under Article 226 of the Constitution of India."

19. In the light of what is stated above, we do not find any error or infirmity in the order, which is under challenge. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, WPMP No.19038 of 2001 is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Additional General
Manager, Business Development,
Union of India,
Office of the Chief Post Master
General, Tamil Nadu Circle,
Chennai-600 002.

2.The Director of Postal Services,
Thiruchirapalli.

3.The Superintendent of Post Offices,
Kumbakonam Division,
Kumbakonam-612 001.

4.The Registrar,
The Central Administrative Tribunal,
Chennai-600 104.

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1 cc to Mr. A. Nagarathinam, Advocate, SR. 3373
1 cc to M/S. K. Mohanram, SCGSC, Advocate, SR. 3366

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